Tun Dr Mahathir bin Mohamad v Tun Md Raus Sharif & Ors

HIGH COURT (KUALA LUMPUR) — JUDICIAL REVIEW NO WA-25–236–06 OF 2024
AMARJEET SINGH J
25 JANUARY 2025

Administrative Law — Judicial review — Royal Commission of Enquiry — Rights of the applicant to present during the whole enquiry — Whether the applicant was entitled to be represented by an advocate throughout the whole of the enquiry — Whether the matter had become academic when the enquiry was concluded and the report of the commission handed over to His Majesty — Commission of Enquiry Act 1950 s 18

The Commission of Enquiry ('the commission') was set up by His Majesty, the Yang di-Pertuan Agong ('YDPA') pursuant to the Commissions of Enquiry Act 1950 relating to the withdrawal of the review applications in International Court of Justice for the a territorial dispute over the sovereignty of Pedra Branca otherwise known as Pulau Batu Puteh between Malaysia and Singapore. The enquiry by the commissioners commenced on 21 May 2024 and the applicant was identified as one of the witnesses. On 20 May 2024, the conducting officers reached out to the applicant seeking his free date to attend the enquiry. The applicant on the same day by letter, amongst others, requested to attend the entire duration of the enquiry with his counsel pursuant to s 18 of the Commission of Enquiry Act 1950. The applicant took the position that the commission was set up to enquire into his conduct concerning the subject matter of the enquiry. On 21 May 2024, the commissioners disagreed with the applicant and refused his request. Dissatisfied with the refusal, the applicant, on 5 June 2024 sought leave of this court to commence judicial review proceedings. On 12 June 2024, the same day the other prayers for leave was refused, the applicant attended and testified before the commissioners at 11am accompanied by his legal counsel. The Secretary of the Commission averred that the commissioners had enquired into the matter based on the terms of reference in respect for which the commission was set up by His Majesty. The commissioners at the conclusion of the enquiry prepared a final report containing the outcome of the studies made, their analysis and recommendations for consideration by the cabinet. On 4 September 2024, at the time of hearing the substantive application, the commissioners had concluded its enquiry and on 12 August 2024 handed their report to His Majesty as required by the terms the commission. The applicant sought for an order of mandamus to compel the first to seventh respondents and any other member of the said Royal Commission of Enquiry to: (a) allow the applicant and his lawyers to be present during the whole of the enquiry of the said Royal

Commission of Enquiry; (b) serve the applicant and his lawyers with all documents, list of witnesses and/or other documentary evidence to be presented at the enquiry of the said Royal Commission of Enquiry; and (c) conduct the enquiry of the said Royal Commission of Enquiry in public. He also prayed an order of prohibition prohibiting: (i) the first respondent from acting as chairman of the said Royal Commission of Enquiry; and (ii) the third and sixth respondents from being members of the said Royal Commission of Enquiry. The issues for determination were: (A) whether the applicant was entitled to be represented by an advocate throughout the whole of the enquiry; and (B) whether the matter had become academic when the enquiry was concluded and the report of the commission handed over to His Majesty.

Held, dismissing the application:

(1) The court was of the considered view that the commission by its terms of reference was not established to enquire into the conduct of the applicant as alleged by the applicant. Therefore, the allegation by the commission was established to enquire into his conduct was unfounded. Reliance on statements made by the ministers in support of his believe was irrelevant to the enquiry. The applicant's legal rights were not affected by an enquiry which the applicant himself acknowledged was a 'fact-finding enquiry'. The conduct of the applicant was clearly not the subject matter of enquiry. Thus, the right to legal representation was not mandatory under s 18 of the Commissions of Enquiry Act 1950. The commissioners were not under a duty to allow the applicant to be represented by an advocate for the entire duration of the enquiry (see paras 19, 22 & 24).

(2) The court was of the view that the issue of whether the matter was academic or not was a non-issue to the relief of mandamus. The relief of mandamus lies to compel a public officer or body to do what the written law requires which the public officer or body had refused to do. Here, the order of mandamus could not be issued against the commissioners as the commission no longer exists after having submitted their report to His Majesty. There was no longer any enquiry in respect of which the commissioners would be proper recipients of the order of mandamus sought by the applicant (see para 26).

[Bahasa Malaysia summary

Suruhanjaya Siasatan ('suruhanjaya tersebut') telah ditubuhkan oleh Seri Paduka Baginda Yang di-Pertuan Agong ('YDPA') menurut Akta Suruhanjaya Siasatan 1950 yang berkaitan dengan penarikan balik permohonan semakan di Mahkamah Keadilan Antarabangsa bagi pertikaian wilayah berhubung kedaulatan antara Pedra Branca atau lebih dikenali sebagai Pulau Batu Puteh antara Malaysia dan Singapre. Siasatan oleh suruhanjaya telah bermula pada 21 Mei 2024 dan pemohon dikenal pasti sebagai salah seorang saksi. Pada 20 Mei 2024, pegawai pengendali menghubungi pemohon untuk

mendapatkan tarikh bebasnya untuk menghadiri siasatan. Pemohon pada hari yang sama melalui surat, antara lain, meminta untuk menghadiri keseluruhan tempoh siasatan bersama peguamnya menurut s 18 Akta Suruhanjaya Siasatan 1950. Pemohon mengambil pendirian bahawa suruhanjaya itu ditubuhkan untuk menyiasat kelakuannya berhubung hal perkara pokok siasatan. Pada 21 Mei 2024, suruhanjaya tidak bersetuju dengan pemohon dan menolak permintaannya. Tidak berpuas hati dengan penolakan itu, pemohon, pada 5 Jun 2024 memohon kebenaran mahkamah ini untuk memulakan prosiding semakan kehakiman. Pada 12 Jun 2024, hari yang sama prayer lain bagi kebenaran ditolak, pemohon hadir dan memberi keterangan di hadapan suruhanjaya pada jam 11 pagi diiringi peguamnya. Setiausaha Suruhanjaya menyatakan bahawa suruhanjaya telah menyiasat perkara itu berdasarkan terma rujukan yang berkaitan dengan suruhanjaya itu ditubuhkan oleh Seri Paduka Baginda. Suruhanjaya pada akhir siasatan menyediakan laporan akhir yang mengandungi hasil kajian yang dibuat, analisis dan cadangan mereka untuk dipertimbangkan oleh kabinet. Pada 4 September 2024, semasa mendengar permohonan substantif, suruhanjaya telah menyelesaikan siasatannya dan pada 12 Ogos 2024 menyerahkan laporan mereka kepada Seri Paduka Baginda sebagaimana yang dikehendaki oleh terma suruhanjaya. Pemohon memohon perintah mandamus untuk memaksa responden pertama hingga ketujuh dan mana-mana anggota lain Suruhanjaya Siasatan Diraja tersebut untuk: (a) membenarkan pemohon dan peguamnya hadir semasa keseluruhan siasatan Suruhanjaya Siasatan Diraja tersebut; (b) menyampaikan kepada pemohon dan peguamnya dengan semua dokumen, senarai saksi dan/atau keterangan dokumentari lain untuk dikemukakan pada siasatan Suruhanjaya Siasatan Diraja tersebut; dan (c) menjalankan siasatan Suruhanjaya Siasatan Diraja tersebut secara terbuka. Beliau juga memohon perintah larangan melarang: (i) responden pertama daripada memangku jawatan pengerusi Suruhanjaya Siasatan Diraja tersebut; dan (ii) responden ketiga dan keenam daripada menjadi ahli Suruhanjaya Siasatan Diraja tersebut. Isu untuk penentuan adalah: (A) sama ada pemohon berhak diwakili oleh peguam sepanjang keseluruhan siasatan; dan (B) sama ada perkara itu telah menjadi akademik apabila siasatan selesai dan laporan suruhanjaya itu diserahkan kepada Kebawah Duli Yang Maha Mulia.

Diputuskan, menolak permohonan:

(1) Mahkamah berpendapat bahawa suruhanjaya itu mengikut terma rujukannya tidak dibuktikan untuk menyiasat kelakuan pemohon seperti yang didakwa oleh pemohon. Oleh itu, dakwaan suruhanjaya itu ditubuhkan untuk menyiasat kelakuannya adalah tidak berasas. Pergantungan kepada kenyataan yang dibuat oleh menteri-menteri yang menyokong kepercayaannya adalah tidak relevan dengan siasatan itu. Hak undang-undang pemohon tidak terjejas oleh siasatan yang diakui sendiri oleh pemohon sebagai 'penyiasatan pencarian fakta'. Tingkah

laku pemohon jelas bukan perkara yang menjadi persoalan. Oleh itu, hak untuk perwakilan undang-undang tidak diwajibkan di bawah s 18 Akta Suruhanjaya Siasatan 1950. Pesuruhjaya tidak bertanggungjawab untuk membenarkan pemohon diwakili peguam sepanjang tempoh siasatan (lihat perenggan 19, 22 & 24).

(2) Mahkamah berpendapat bahawa isu sama ada perkara itu akademik atau tidak adalah bukan isu relif mandamus. Relif mandamus terletak untuk memaksa pegawai atau badan awam untuk melakukan apa yang dikehendaki oleh undang-undang bertulis yang enggan dilakukan oleh pegawai atau badan awam itu. Di sini, perintah mandamus tidak boleh dikeluarkan terhadap suruhanjaya kerana suruhanjaya itu tidak lagi wujud setelah menyerahkan laporan mereka kepada Seri Paduka Baginda. Tiada lagi apa-apa siasatan berhubung suruhanjaya akan menjadi penerima yang sepatutnya bagi perintah mandamus yang diminta oleh pemohon (lihat perenggan 26).]

Cases referred to

Dhinesh a/l Tanaphll v Lembaga Pencegahan Jenayah & Ors [2022] 3 MLJ 356, FC (refd)

Maria Chin Abdullah v Ketua Pengarah Imigresen & Anor [2021] 1 MLJ 75, FC (refd)

Menteri Besar Negeri Pahang Darul Makmur v Seruan Gemilang Makmur Sdn Bhd [2010] 4 MLJ 360; [2010] 5 CLJ 123, CA (refd)

Milebush Properties Ltd v Tameside Metropolitan Borough Council [2011] EWCA Civ 270, CA (refd)

Peguam Negara Malaysia v Nurul Izzah bt Anwar & Ors [2017] 4 MLJ 656; [2017] 5 CLJ 595, CA (refd)

Rolls-Royce plc v Unite the Union [2010] 1 WLR 318, CA (refd)

Legislation referred to

Commissions of Enquiry Act 1950 s 18
Rules of Court 2012 O 53 r 3(8)

Zainur bin Zakaria (with Muhammad Rafique bin Rashid Ali and Nurmustanir bin Md Nor) (Law Practice of Rafique) for the applicant.

Shamsul bin Bolhassan (with Nurhafiza bt Azizan and Ng Wee Li) (Federal Counsel, Attorney General's Chamber) for the respondents.

Amarjeet Singh J:

INTRODUCTION

[1] On 5 June 2024, the applicant, Tun Dr Mahathir bin Mohamad sought leave of this court to commence judicial review proceedings for the following orders:

(a) a declaration that the applicant is a person whose conduct is subject of enquiry, or who is implicated or concerned in the matter under enquiry of the Royal Commission of Enquiry to Review the Handling of Matters Related to the Sovereignty Case of Batu Puteh, Middle Rocks and South Ledge under s 18 of the Commissions of Enquiry Act 1950);

(b) an order of mandamus to compel the first to seventh respondents and any other member of the said Royal Commission of Enquiry to:

(i) allow the applicant and his lawyers to be present during the whole of the enquiry of the said Royal Commission of Enquiry;

(ii) serve the applicant and his lawyers with all documents, list of witnesses and/or other documentary evidence to be presented at the enquiry of the said Royal Commission of Enquiry; and

(iii) conduct the enquiry of the said Royal Commission of Enquiry in public;

(c) an order of prohibition prohibiting:

(i) the first respondent from acting as chairman of the said Royal Commission of Enquiry; and

(ii) the third and sixth respondents from being members of the said Royal Commission of Enquiry;

(d) an order that all proceedings of the said Royal Commission of Enquiry be stayed pending the final disposal of this application, pursuant to O 53 r 3(8) of the Rules of Court 2012.

[2] Leave was only granted for to commence judicial review proceedings for an order of mandamus to compel the members of the said Royal Commission of Enquiry ('the Commissioners') to allow the applicant and his advocate to be present during the whole of the enquiry. There was an appeal against the refusal to grant the remaining prayers but that appeal has since been withdrawn.

[3] On 13 January 2025, I dismissed the substantive application for the order of mandamus. These are the reasons for my decision.

BACKGROUND FACTS

[4] The salient facts. Malaysia and Singapore were in a territorial dispute over the sovereignty of Pedra Branca otherwise known as Pulau Batu Puteh. The dispute was brought to the International Court of Justice which on 23 May 2008 handed down a judgment stating that Pulau Batu Puteh belongs to the Republic of Singapore.

[5] In response to the judgment, Malaysia filed two applications: one for revision and the other for an interpretation of the judgment ('the review applications'). The review applications were subsequently withdrawn by Malaysia which effectively ended the dispute over Pulau Batu Puteh. The facts show that the review applications were withdrawn during the tenure of the applicant as Prime Minister of Malaysia. On 9 October 2021, after the applicant had left office and during the tenure of Dato' Sri Ismail Sabri as Prime Minister ('Ismail Sabri'), it was announced that the cabinet had resolved to set up a Special Task Force ('STF') to investigate the withdrawal of the review applications.

[6] Thereafter, on 14 February 2024, during the tenure of the present Prime Minister, Datuk Seri Anwar Ibrahim, a Commission of Enquiry ('the Commission') was set up by His Majesty, the Yang di-Pertuan Agong ('YDPA') pursuant to the Commissions of Enquiry Act 1950 relating to not only Pulau Batu Puteh but also Batuan Tengah and Tubir Selatan. The enquiry by the Commissioners commenced on 21 May 2024 and the applicant was identified as one of the witnesses. On 20 May 2024, the conducting officers reached out to the applicant seeking his free date to attend the enquiry.

[7] The applicant on the same day by letter, amongst others, requested to attend the entire duration of the enquiry with his counsel pursuant to s 18 of the Commissions of Enquiry Act 1950. The applicant took the position that the Commission was set up to enquire into his conduct concerning the subject matter of the enquiry. On 21 May 2024, the Commissioners disagreed with the applicant and refused his request. Dissatisfied with the refusal, the applicant, on 5 June 2024 sought leave of this court to commence judicial review proceedings for the prayers stated in para [1] above.

[8] On 12 June 2024, the same day the other prayers for leave was refused, the applicant attended and testified before the Commissioners at 11am accompanied by his legal counsel. The Secretary of the Commission, Zamri bin Misman, averred that the Commissioners had enquired into the matter based on the terms of reference in respect for which the Commission was set up by His Majesty. The Commissioners at the conclusion of the enquiry prepared a final report containing the outcome of the studies made, their analysis and

recommendations for consideration by the Cabinet.

[9] On 4 September 2024, at the time of hearing the substantive application, the Commissioners had concluded its enquiry and on 12 August 2024 handed their report to His Majesty as required by the terms the Commission.

ANALYSIS AND DECISION

[10] The only issue before me was whether the order of mandamus be issued as prayed by the applicant.

The applicant's submission

[11] In this regard, the applicant submitted that although the Commission was a 'fact-finding enquiry' the applicant had reasonable grounds to believe the applicant's conduct was the subject of the enquiry or who is implicated or concerned in the matter under enquiry. Therefore, the applicant argued that he is entitled to be represented by an advocate throughout the whole of the enquiry as required by s 18 of the Commissions of Enquiry Act 1950. Section 18 of the Commissions of Enquiry Act 1950 is reproduced below for its effect and purport:

> *Any person whose conduct is the subject of enquiry under this Act, or who is in any way implicated or concerned in the matter under enquiry, shall be entitled to be represented by an advocate at the whole of the enquiry;* and any other person who may consider it desirable that he should be so represented may, by leave of the Commissioner or Commissioners, be represented in the manner aforesaid. The Attorney General, the Solicitor General, any Federal Counsel, or any legally qualified member of the State Attorney General's Chambers, Sabah or Sarawak, authorized in that behalf by the State Attorney General, shall be entitled at any time to appear before and address the Commissioners on any matter which to the Attorney General appears to be relevant to the enquiry.

[12] The applicant's grounds for believing that his conduct was the subject of the enquiry or who was implicated or concerned in the matter under enquiry was based on statements appearing in the *New Straits Times*. The statements are:

(a) the first statement was attributed to have been made by the Minister in the Prime Minister's Department (Law and Reform) in the Dewan Negara to the effect that the then Prime Minister, who was the applicant, had made the decision to withdraw the review applications in secret and without the advice of the Attorney General. These statements were made on 1 April 2024; and

(b) the other statement was attributed to Ismail Sabri who was reported saying on October 2021 that there was a possibility of *negligence and*

oversight by the applicant over the Pulau Batu Puteh issue and that the Cabinet was informed by the Special Task Force set up to inquire into the Pulau Batu Puteh issue that the applicant may have made a *mistake* in withdrawing the review applications.

THE SUBMISSION ON BEHALF OF THE COMMISSIONERS

[13] It was submitted by senior federal counsel that the terms of reference under which the Commissioners were confined to were not in any way targeting the applicant. Therefore, the Commissioners had acted in accordance with s 18 of the Commissions of Enquiry Act 1950 by only allowing the applicant to be present with his advocate during the time he was being called upon to testify, as opposed to the right to be present during the entire enquiry.

[14] It was also submitted that the decision of the Commissioners was in line with the term of the Commission to hold the enquiry in private. This submission can easily be disposed at this stage as the direction to hold the enquiry in public or private does not affect the right to be represented by an advocate if the conduct of a person or of a person who is in any way implicated or concerned with the subject matter under enquiry. The right is a guaranteed right that cannot be denied the person whose conduct is under enquiry or a person who in any way implicated or concerned in such enquiry.

[15] The decision of the Court of Appeal in *Peguam Negara Malaysia v Nurul Izzah bt Anwar & Ors* [2017] 4 MLJ 656; [2017] 5 CLJ 595 in the following paragraph of the judgment demolished this submission:

> [36] This section clearly comprises three limbs. The first limb deals with the right to representation by counsel which is available to any person whose conduct is the subject of enquiry under Act 119, or who is in any way implicated or concerned in the matter under enquiry. This right, so far as the enquiry concerns this category, is without doubt guaranteed as of right ...

[16] The applicant is relying on the first limb of s 18 of the Commissions of Enquiry Act 1950 for the order of mandamus. The evidence shows that he had asked to be represented by an advocate but was denied by the Commissioners. The applicant has turned to this court to compel the Commissioners to grant him the right to be represented by his advocate.

[17] There is no doubt that a person who falls within the first limb of s 18 of the Commissions of Enquiry Act 1950 has a right of representation by an advocate which cannot be denied him. In *Nurul Izzah bt Anwar* the Court of Appeal gave the intention of the legislature for such a person being accorded legal representation in the following words:

A It is not difficult to fathom the reason why s 19 of Act 119, insofar as it concerns the person who is the subject of an enquiry, guarantees this right. This is because the legal right of the person whose conduct is the subject of enquiry may be affected by the outcome of such enquiry. The right to legal representation is thus necessary.

B **[18]** In contrast, the second limb which states, 'any other person who may consider it desirable that he should be so represented may, by leave of the Commissioners' be so represented. In this instance, the Commissioners have the discretion to allow or not allow the request.

C DECISION ON THE MERITS

[19] The Commission by its terms of reference was not established to enquire into the conduct of the applicant as alleged by the applicant. Therefore, the allegation by the Commission was established to enquire into his conduct D is unfounded. Reliance on statements made by the Ministers in support of his believe is irrelevant to the enquiry. The Commissioners must strictly confine itself to the terms of reference and nothing else. The Commissioners would be acting in excess of their jurisdiction if they stray outside the boundaries of their E commission.

[20] In the instant case, the first term of reference required the Commissioners to certify, amend or alter any facts or discoveries that have been recorded by the Special Task Force commissioned by the Cabinet to submit a F report on the Sovereignty of Pulau Batu Puteh, Middle Rocks and South Ledge. Such certification, amendment or alteration is to be made through the discoveries of further evidence related to the said report taking into account the challenges that have been encountered by the Special Task Force in preparing the outcome of its findings. The report is a privileged document solely for the G Cabinet. One obvious challenge of any such task force commissioned by the Cabinet is that it does not have coercive powers to secure the attendance of witnesses like a commission of enquiry established under the Commissions of Enquiry Act 1950. If witnesses do not attend or documents are not furnished the report of the task force would be lacking in facts. So much for the first of H reference.

[21] The second and third terms of reference are related. The second, requires the Commissioners to give their opinion, after examining and I reviewing the facts, if any related party have violated any laws, work norms or administrative circular in the performance of their duties while the third is to assess, identify and propose recommendations relating to the legal and non-legal actions that may be taken:

(a) against any related parties handling the claims;

(b) to improve the work process in relation to the process or relating to the claims; and

(c) to protect Middle Rocks and South Ledge and the surrounding territorial water around Batu Puteh, Middle Rocks and South Ledge.

[22] Secondly, the applicant's legal rights are not affected by an enquiry which the applicant himself acknowledges is a 'fact-finding enquiry'. The conduct of the applicant was clearly not the subject matter of enquiry. Thus, the right to legal representation is not mandatory under s 18 of the Commissions of Enquiry Act 1950.

[23] In this regard, the law on the remedy of mandamus is trite. The remedy is only available if the performance of the duty is imperative and not optional or discretionary. It suffices to quote the principle established in *Menteri Besar Negeri Pahang Darul Makmur v Seruan Gemilang Makmur Sdn Bhd* [2010] 4 MLJ 360; [2010] 5 CLJ 123, the following statement by the learned author in MP Jain's *Administrative Law in Malaysia and Singapore* (2nd Ed, 1980) at pp 449–450, which is in the following words:

> ... Mandamus can be granted only when a legal duty is imposed on an authority and the applicant has a legal right to compel the performance of the public duty prescribed by law, and to keep the subordinate bodies and officers exercising public functions within the limit of their jurisdiction. Mandamus is thus a very wide remedy which is available against a public officer to see that he does his duty.

[24] Therefore, the Commissioners were not under a duty to allow the applicant to be represented by an advocate for the entire duration of the enquiry. In any event, an order of mandamus sought by the applicant cannot lie or be issued when there is no recipient of such order, given that, the Commission is no longer in existence after submitting their report to His Majesty.

DECISION ON THE ACADEMIC ISSUE

[25] The other issue strenuously ventilated before me by the parties was whether the matter had become academic when the enquiry was concluded and the report of the Commission was on 12 August 2024 handed over to His Majesty. Much industry on the issue had gone into the submissions of both counsels.

[26] In my view, the issue of whether the matter was academic or not is a non-issue to the relief of mandamus. The relief of mandamus lies to compel a public officer or body to do what the written law requires which the public officer or body had refused to do. Here, the order of mandamus cannot be

issued against the Commissioners as the Commission no longer exists after having submitted their report to His Majesty. There is no longer any enquiry in respect of which the Commissioners would be proper recipients of the order of mandamus sought by the applicant.

[27] In their submissions, both parties submitted on the issue of 'the matter has become academic' referring to cases mainly where declarations were sought. The principles governing granting of a declaratory order is instructively set forth by Aikens LJ in *Rolls-Royce plc v Unite the Union* [2010] 1 WLR 318 at para 120 which was modified in *Milebush Properties Ltd v Tameside Metropolitan Borough Council* [2011] EWCA Civ 270. The principles of relevance for our purpose are: (i) the power of the court to grant declaratory relief is discretionary; and (ii) that the court will be prepared to give declaratory relief in respect of a 'friendly action' or where there is an *'academic question'* if all parties so wish. In other words, academic questions are generally not granted if objected to.

[28] The Federal Court in *Maria Chin Abdullah v Ketua Pengarah Imigresen & Anor* [2021] 1 MLJ 75 clearly illustrated the exception to the general principles as follows:

> [457] The general principles applicable to a declaration based on public interest to overcome what is otherwise an academic exercise are summarised in *Rolls-Royce plc v Unite the Union* [2010] 1 WLR 318 as modified in *Milebush Properties Ltd v Tameside Metropolitan Borough Council* [2011] EWCA Civ 270. The two main features of the limitation of the court's discretion are *justice of the case* and the *utility of the adopted measure.*

[29] The instant case does not concern a declaratory order. While a declaratory order is discretionary as there are many factors to consider, an order of mandamus, on the other hand, is only concerned with the issue of whether what was not done by the public officer or body is mandatory. This court has no discretion in the matter which is mandatory for the public officer or public body to perform.

[30] Likewise, the preventive detention cases seeking the remedy of *habeas corpus* concern the issue of whether the initial arrest or detention was valid. In *Dhinesh a/l Tanaphll v Lembaga Pencegahan Jenayah & Ors* [2022] 3 MLJ 356 and the other cases relied by the applicant the principle is a prior defect was not academic and remained available to be considered by the courts even after the expiry of a remand order which was overtaken by a subsequent order of detention by the Minister. Therefore, the issue of 'academic' is not an issue.

CONCLUSION

[31] For the above reasons, the application for an order of mandamus is refused.

Application dismissed.

Reported by Muhamad Azham Marwan